

**WSR 22-08-023**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**  
[Filed March 25, 2022, 4:15 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-01-073 Choice performance confirmation, 357-01-230 Performance management confirmation, 357-01-351 Veterans placement program, 357-19-400 May an employer convert a nonpermanent appointment to a probationary or trial service appointment?, 357-31-565 May employers grant paid leave for purposes of recognition?, 357-37-050 May an employer factor in employee performance when granting recognition leave?, 357-37-055 How does an employer receive choice performance confirmation which enables them to factor in employee performance when granting recognition leave?, 357-37-060 What elements will the director evaluate to determine if an employer should be granted choice performance confirmation?, 357-46-020 What must be included in the employer's layoff procedure?, 357-46-050 How does an employer determine an employee's employment retention rating?, 357-58-065 Definitions for WMS, 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?, 357-58-425 May an employer factor in employee performance when granting recognition leave for WMS employees?, 357-58-430 How does an employer receive choice performance confirmation which enables them to factor in performance when granting recognition leave for WMS employees?, and 357-58-435 What elements will the director evaluate to determine if an employer should be granted choice performance confirmation?

Hearing Location(s): On May 12, 2022, at 8:30 a.m., at Office of Financial Management (OFM), audio conference only, Dial-in 888-285-8919, Pin 8101730, Code (if asked) 415.

Date of Intended Adoption: May 19, 2022.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by May 5, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add a new section to define veterans' placement program; to allow employers to change the status of a nonpermanent appointment to probationary or trial service if the nonpermanent position was filled by using a veterans' placement program; and to state that an employer's Washington management service recruitment and selection policy and/or procedure should consider making appointments from a veterans' placement program. The proposed amendment to WAC 357-19-400(1) is to repeal the language "if the employee held permanent status prior to the nonpermanent appointment" because in order for an employee to be in a trial service they must hold permanent status.

The amendment to WAC 357-01-073 and 357-58-065(2) is to define "choice performance confirmation" and to repeal WAC 357-01-230 and 357-58-065(9) to remove the prior definition for performance management confirmation. In addition, to amend the current performance management confirmation (PMC) WAC to reflect the choice performance confirmation (CPC) program title change and remove language referencing

the ability to factor employee performance when making layoff decisions.

Reasons Supporting Proposal: To align Title 357 WAC with Governor Jay Inslee's Executive Order 19-01 directing state agencies to bridge employment opportunities to increase veteran employment. Veterans' placement programs are considered bridge employment opportunities and state agencies are strongly encouraged to use them.

To align Title 357 WAC with CPC program. In September 2016, state human resources (SHR) launched CPC pilot program, a modified version of PMC program. The pilot was designed to assist state employers in the development of a performance management program that (1) creates and manages a performance-based culture; (2) links individual, team, and organizational performance goals; (3) meaningfully distinguishes among different levels of performance; and (4) develops a fair and transparent performance program. The pilot program included changes to the performance-based incentives for confirmed agencies. While CPC was operating as a pilot program, it remained operating under PMC program title. During the preparation for the pilot, SHR met with all CPC confirmed agencies to solicit feedback and recommendations. During that process, SHR learned that participating agencies had never and do not intend on using layoff as part of the program. We are proposing to remove layoff as an option for performance-based incentives. Removing the language "factor employee performance when making layoff decisions" will not impact confirmed agencies.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-878-2901.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

March 25, 2022  
Roselyn Marcus  
Assistant Director of  
Legal and Legislative Affairs

**OTS-3647.2**

NEW SECTION

**WAC 357-01-073 Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

[ ]

NEW SECTION

**WAC 357-01-351 Veterans placement program.** A program that is designed to grant transitioning service members and veterans additional support to attain state employment.

[ ]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-01-230 Performance management confirmation.

**OTS-3622.3**

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

**WAC 357-19-400 May an employer convert a nonpermanent appointment to a probationary or trial service appointment?** (1) When an employer uses a competitive process to make a nonpermanent appointment to fill a position in the absence of a permanent employee or fill a position nonpermanently due to the impending or actual layoff of a permanent employee(s), the employer may change the status of the appointment to probationary or ~~((if the employee held permanent status prior to the nonpermanent appointment))~~ to trial service if:

(a) The permanent employee does not return to the position or the layoff action has been implemented; and

(b) The employer needs to fill the position permanently.

(2) When an employer uses a veterans placement program to fill a nonpermanent position for any reason listed in WAC 357-19-360, the employer may change the status of the appointment to probationary or to trial service.

(3) At the discretion of the appointing authority, time spent in the nonpermanent appointment may count towards the probationary or trial service period for the permanent position.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-400, filed 6/30/21 and 12/15/21, ef-

fective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 06-15-066, § 357-19-400, filed 7/13/06, effective 8/14/06; WSR 05-01-206, § 357-19-400, filed 12/21/04, effective 7/1/05.]

### OTS-3648.1

AMENDATORY SECTION (Amending WSR 07-17-124, filed 8/20/07, effective 9/20/07)

**WAC 357-31-565 May employers grant paid leave for purposes of recognition?** Employers who have received choice performance (~~management~~) confirmation may grant employees up to five days of paid leave within a (~~twelve-month~~) 12-month period to recognize outstanding accomplishments or the achievement of predefined work goals by individual employees or units. Leave granted under this provision:

- (1) Is not payable upon layoff, dismissal, separation, or resignation or transferable between employers;
- (2) Must be used within (~~twelve~~) 12 months of the leave being granted.

[Statutory Authority: Chapter 41.06 RCW. WSR 07-17-124, § 357-31-565, filed 8/20/07, effective 9/20/07; WSR 06-23-091, § 357-31-565, filed 11/14/06, effective 12/18/06; WSR 05-08-140, § 357-31-565, filed 4/6/05, effective 7/1/05.]

### OTS-3649.1

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

**WAC 357-37-050 May an employer factor in employee performance when granting recognition leave ((and when making layoff decisions))?** An employer may factor in an employee's performance when granting recognition leave (~~and when making layoff decisions~~) if the employer has received choice performance (~~management~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-37-050, filed 2/12/16, effective 3/14/16; WSR 05-01-194, § 357-37-050, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

**WAC 357-37-055 How does an employer receive choice performance ((management)) confirmation which enables them to factor in employee performance when granting recognition leave ((and when making layoff decisions))?** Employers may request choice performance (~~management~~)

confirmation from the director. The director will use the elements listed in WAC 357-37-060 to assess and evaluate an employer's readiness to fairly and objectively factor in employee performance when granting recognition leave (~~and when making layoff decisions~~). If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted choice performance (~~management~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-37-055, filed 2/12/16, effective 3/14/16; WSR 05-01-194, § 357-37-055, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

**WAC 357-37-060 What elements will the director evaluate to determine if an employer should be granted choice performance (~~management~~) confirmation?** The director will evaluate the following elements to determine if an employer should receive choice performance (~~management~~) confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based recognition leave;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-37-060, filed 2/12/16, effective 3/14/16; WSR 05-01-194, § 357-37-060, filed 12/21/04, effective 7/1/05.]

#### **OTS-3650.1**

AMENDATORY SECTION (Amending WSR 10-11-068, filed 5/14/10, effective 6/15/10)

**WAC 357-46-020 What must be included in the employer's layoff procedure?** The employer's layoff procedure must:

(1) Identify clearly defined layoff unit(s) that minimize disruption of the employer's total operation and provide options to employees scheduled for layoff;

- Employers may establish separate and exclusive layoff units for project employment, employee business units, or special employment programs.

(2) Provide opportunities to avoid or minimize layoff, such as transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay;

(3) Require the appointing authority to provide written notice of layoff to employees in accordance with WAC 357-46-025;

(4) Provide layoff options for permanent employees being laid off as provided in WAC 357-46-035;

(5) Address the time frame in which employees must select a layoff option;

(6) Define what the employer considers when determining the comparability of a position;

(7) Identify the employer's legitimate business requirements if the employer is going to consider those requirements in determining layoff options under WAC 357-46-035;

- Legitimate business requirements may include requirements such as circumstances or characteristics that render a position uniquely sensitive to disruption in continuity such as meeting critical deadlines, continuity in patient care, or research progress.

(8) Describe how employment retention ratings will be calculated (~~(, including options for factoring performance into ratings)~~); and

(9) Specify how the employer will break ties when more than one employee has the same employment retention rating.

(10) Higher education employers address in their layoff procedure whether or not employees have layoff list rights to classes they held permanent status in prior to any breaks in state service.

[Statutory Authority: Chapter 41.06 RCW. WSR 10-11-068, § 357-46-020, filed 5/14/10, effective 6/15/10; WSR 07-11-092, § 357-46-020, filed 5/16/07, effective 7/1/07; WSR 04-18-114, § 357-46-020, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-12-084, filed 5/27/05, effective 7/1/05)

**WAC 357-46-050 How does an employer determine an employee's employment retention rating?** The employer determines an employee's employment retention rating using seniority as calculated in WAC 357-46-055 for general government employees and 357-46-053 for higher education employees. (~~Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority.~~)

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-084, § 357-46-050, filed 5/27/05, effective 7/1/05; WSR 04-18-114, § 357-46-050, filed 9/1/04, effective 7/1/05.]

## OTS-3651.3

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

**WAC 357-58-065 Definitions for WMS.** The following definitions apply to chapter 357-58 WAC:

(1) **Break in service.** An employee has a break in continuous state service if the employee is separated, dismissed or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC 357-58-550 is not considered a break in continuous state service.

(2) **Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

(3) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

~~((3))~~ (4) **Director.** State human resources director within the office of financial management.

~~((4))~~ (5) **Dismissal.** The termination of an individual's employment for disciplinary reasons.

~~((5))~~ (6) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

~~((6))~~ (7) **Evaluation points.** The points resulting from an evaluation of a position using the managerial job value assessment chart.

~~((7))~~ (8) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

~~((8))~~ (9) **Management bands.** A series of management levels included in the WMS. Placement in a band reflects the nature of management, decision-making environment and policy impact and scope of management accountability and control assigned to the position.

~~((9) Performance management confirmation. Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave and when making layoff decisions.)~~

(10) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

(11) **Reassignment.** An employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and the employee in that position from one section, department or geographical location to another section, department or geographical location.

(12) **Review period.** A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

(13) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

(14) **Separation.** Separation from state employment for nondisciplinary reasons.

(15) **Suspension.** An absence without pay for disciplinary reasons.

(16) **Transfer.** An employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

(17) **Veterans placement program.** A program that is designated to grant transitioning service members and veterans additional support to attain state employment.

(18) **Washington general service (WGS).** The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~((18))~~ (19) **Washington management service (WMS).** The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.150. WSR 19-11-136, § 357-58-065, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-065, filed 2/12/16, effective 3/14/16; WSR 11-23-054, § 357-58-065, filed 11/10/11, effective 12/13/11; WSR 07-11-092, § 357-58-065, filed 5/16/07, effective 7/1/07; WSR 05-21-060, § 357-58-065, filed 10/13/05, effective 11/15/05; WSR 05-12-068, § 357-58-065, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-009, filed 2/20/20, effective 3/30/20)

**WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?** An agency's WMS recruitment and selection policy must:

(1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;

(2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;

(3) Support workforce diversity and affirmative action goals;

(4) Consider the career development of the agency's employees and other state employees;

(5) Consider making appointments from a veterans placement program;

(6) Ensure that hiring decisions are not based on patronage or political affiliation;

~~((6))~~ (7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;

~~((7))~~ (8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;

~~((8))~~ (9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220.

[Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

**WAC 357-58-425 May an employer factor in employee performance when granting recognition leave (~~and when making layoff decisions~~) for WMS employees?** A general government employer may factor in an employee's performance when granting recognition leave (~~and when making layoff decisions~~) if the employer has received choice performance (~~management~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-425, filed 2/12/16, effective 3/14/16; WSR 05-12-071, § 357-58-425, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

**WAC 357-58-430 How does an employer receive choice performance (~~management~~) confirmation which enables them to factor in performance when granting recognition leave (~~and when making layoff decisions~~) for WMS employees?** Employers may request choice performance (~~management~~) confirmation from the director for WMS employees. The director will use the elements listed in WAC 357-58-435 to assess and evaluate an employer's readiness to fairly and objectively factor in performance when granting recognition leave (~~and when making layoff decisions~~). If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted choice performance (~~management~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-430, filed 2/12/16, effective 3/14/16; WSR 11-23-054, § 357-58-430, filed 11/10/11, effective 12/13/11; WSR 05-12-071, § 357-58-430, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

**WAC 357-58-435 What elements will the director evaluate to determine if an employer should be granted choice performance (~~management~~) confirmation?** The director will evaluate the following elements to determine if an employer should receive choice performance (~~management~~) confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;

- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based recognition leave;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-435, filed 2/12/16, effective 3/14/16; WSR 11-23-054, § 357-58-435, filed 11/10/11, effective 12/13/11; WSR 05-12-071, § 357-58-435, filed 5/27/05, effective 7/1/05.]